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Federal Communications Commission
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.622(h))
Table of Allotments,)
Digital Television Broadcast Stations,)
(Corpus Christi, Texas))

MM Docket No. 99-277
RM-9666

To: Chief, Video Division, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Channel 3 of Corpus Christi, Inc., licensee of television station KIII, Corpus Christi, Texas ("KIII"), by its attorneys, pursuant to Section 1.429(f) of the Commission's rules, hereby opposes the Petition for Reconsideration filed on January 6, 2004 by Channel 7 of Corpus Christi, Inc. ("Channel 7") licensee of LPTV station KTOV-LP, Corpus Christi, Texas, in the above-referenced proceeding.¹

Channel 7's request that the Commission reconsider and vacate its Report and Order allotting DTV Channel 8 to Corpus Christi is based on two arguments.² First, Channel 7 argues that the Commission's dismissal of Sound Leasing, Inc.'s ("Sound Leasing") late-filed comments was in error. Second, Channel 7 argues that the Commission should have afforded its application for a Class A television license on Channel 7 priority over KIII's DTV Channel 8

¹ This Opposition is being filed well within the time limits set forth in Section 1.429(f) of the Commission's rules.

² Channel 7 states that it acquired KTOV-LP from Sound Leasing. Channel 7 seeks to substitute itself in place of Sound Leasing in this proceeding, even though Sound Leasing was unsuccessful in its attempt to participate in the earlier phase of the rulemaking proceeding because it filed its comments too late.

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proposal. As explained more fully below, both of these arguments are without foundation and must be rejected.

Channel 7 argues that the FCC erred in dismissing Sound Leasing's late-filed pleadings in this proceeding. According to the Commission, Sound Leasing filed initial comments (dated October 29, 1999) in this proceeding on November 4, 1999 --3 days after the November 1, 1999 comment filing deadline. By letter dated November 3, 1999 and filed with the Commission on November 8, 1999, Sound Leasing requested that its initial comments be dismissed without prejudice. Almost 10 months after the pleading cycle ended, Sound Leasing filed a new round of pleadings. On September 7, 2000, it filed a pleading entitled "Ex Parte Statement of Sound Leasing, Inc." and on October 2, 2000, it filed a "Petition for Leave to File Supplemental Comments" and "Supplemental Reply Comments of Sound Leasing, Inc."³

The Commission's holding that Sound Leasing's late-filed pleadings were not entitled to consideration was clearly correct and consistent with the applicable Commission rules. Because the pleadings were filed many months after the filing deadline established in the Report and Order and the Commission's rules, Section 1.415(b) and (d), dismissal of the pleadings was the appropriate action. Sound Leasing could have sought to keep its initial comments on file (even though these comments were also late-filed) by requesting the Commission to hold in abeyance the rulemaking proceeding, including its initial comments, pending the outcome of settlement negotiations between the parties. Instead, however, Sound Leasing chose to voluntarily withdraw its initial comments. It did so at its own peril. Having elected the wrong course of action by withdrawing its initial comments, Channel 7 cannot now be heard to complain that the

³ Channel 7 refers (Opposition, para. 8) to its second round of pleadings as a "re-filed opposition." However, the arguments advanced in Sound Leasing's later-filed comments bear no resemblance to the arguments reflected in its initial comments; indeed, the initial comments contain none of the legal arguments presented in the later-filed comments.

Commission's action dismissing the new, very late-filed comments was in error. Certainly, private negotiations between parties do not excuse a failure to comply with the Commission's filing rules and deadlines.⁴ If Channel 7's position was adopted, this would wreck havoc to the Commission's processes in rulemaking proceedings because it would allow persons who filed untimely comments to withdraw them and then submit new comments (in this case with new arguments) well beyond the filing deadline. This would make mockery of the Commission's filing deadlines and hinder its ability to make timely decisions. Because Sound Leasing did not timely participate or achieve party status in the earlier phase of this rulemaking proceeding, Channel 7 has no right to file a Petition for Reconsideration and the Petition should be dismissed. Dismissal is required because Channel 7 has failed to satisfy any of the prerequisites for acceptable petitions set forth in Section 1429(b) of the Commission's rules.⁵

Channel 7 argues that the Commission should have ruled that its Class A license application for Channel 7 has priority over KIII's DTV Channel 8 proposal and that this ruling should have been forthcoming even if Channel 7 was denied party status in the rulemaking proceeding. This argument is without merit. The Commission has no obligation to consider arguments which were not properly raised in the rulemaking proceeding. More importantly, Channel 7's argument fails to recognize that, in an earlier related case involving Channel 7 and KIII, the Commission has already considered all of Channel 7's arguments and ruled against it on this precise issue -- a fact obviously known to Channel 7, but ignored by it. By letter ruling

⁴ KIII acted in good faith in entering into settlement negotiations with Sound Leasing, but a settlement could not be achieved because of what KIII perceived to be excessive demands by Sound Leasing.

⁵ Channel 7 also alleges that the Commission's dismissal of comments filed by Mineva R. Lopez, licensee of LPV station KIMV-LP, Channel 8, Corpus Christi, Texas, was in error. The Commission's dismissal of these comments was also correct and consistent with the applicable Commission rules since the comments were filed 15 months after the filing deadline. Moreover, Mineva R. Lopez did not seek reconsideration of the Report and Order.

dated March 22, 2002.⁶ the Commission correctly ruled that KIII's DTV Channel 8 proposal has priority over the Channel 7 Class A television license application. The Commission stated that Sound Leasing (now Channel 7) will be required to protect the DTV Channel 8 allotment if KIII's rulemaking petition is granted. The Commission further stated that if it grants KIII's rulemaking petition, Sound Leasing (now Channel 7) will have an opportunity to file for displacement relief.⁷

Channel 7 cannot properly seek to re-litigate this earlier ruling in the context of this rulemaking proceeding. This is particularly true since the petition for reconsideration filed by Channel 7 in the rulemaking proceeding contains no new arguments beyond those which it raised earlier and which have already been considered and rejected by the Commission in its letter ruling.⁸ Having ruled that KIII's DTV Channel 8 proposal takes precedence over the Channel 7 Class A application, the Commission must reject Channel 7's Petition for Reconsideration and affirm its decision allotting DTV Channel 8 to Corpus Christi.

In view of the foregoing, the Commission should dismiss or, in the alternative, deny Channel 7's Petition for Reconsideration and affirm its Report and Order allotting DTV Channel 8 to Corpus Christi.⁹ It is requested that the Commission expedite its consideration of and action

⁶ A copy of this letter ruling is attached as Attachment A for the convenience of the Commission.

⁷ Channel 7 did file an application for displacement relief on December 4, 2003 proposing to change its channel of operation from 7 to 49. The fact that an alternative channel is available (contrary to what Sound Leasing told the Commission in its initial comments) means that KTOV-LP can continue broadcasting, notwithstanding the allotment of DTV Channel 8 to Corpus Christi, without fear of loss of service. Because Channel 7's Class A license application for Channel 7 and its displacement application for Channel 49 are inconsistent and conflicting applications, Channel 7 must elect which one of the applications it will prosecute and which one it will withdraw. Section 73.3518 of the Commission's rules.

⁸ Channel 7 has filed a petition for reconsideration of the letter ruling which was opposed by KIII. This matter is pending.

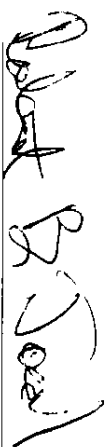
⁹ Simultaneously with the filing of the Petition for Reconsideration, counsel for Channel 7 also filed "Comments in Support of Petition for Reconsideration" on behalf of the Community Broadcasters Association. KIII is filing a motion to dismiss that pleading because not only is it late filed, but it is also an unauthorized pleading under the Commission's rules.

on this matter so that this case, which commenced about 5 years ago (in February 1999), can finally be concluded

Respectfully submitted

CHANNFL 3 OF CORPUS CHRISTI, INC

By

A handwritten signature in black ink, appearing to read "Robert B. Jacobi", is written over a horizontal line.

Robert B. Jacobi
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Dated January 16, 2004



Federal Communications Commission
Washington, D.C. 20554

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Re: Applications for Class A Licenses
Stations KTOV-LP and KTMV-LP
File Nos. BLTVA-20000905AAE
And BLTVA-20011220DO
Facility ID Nos. 42711, 68452

Dear Counsel:

This is with respect to the petitions to deny filed by Channel 3 of Corpus Christi, Inc., the licensee of station KIII(TV), Channel 3, Corpus Christi, Texas, against the above-referenced applications for a Class A television license. Sound Leasing, Inc. and Minerva R. Lopez, the licensees of low power television stations KTOV-LP, channel 7, and KTMV-LP, channel 8, Corpus Christi, respectively, oppose the petitions.

On November 29, 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA),¹ pursuant to which certain eligible low power television stations are to be accorded Class A “primary” status as a television broadcaster. Pursuant to the terms of the statute, qualified low power television licensees intending to convert to Class A status were required to submit a statement of eligibility to the Commission within 60 days of enactment of the CBPA, which was January 28, 2000. Sound and Lopez both filed timely certifications of eligibility for Class A status and were granted such certification by public notice released June 2, 2000. Subsequently, they filed the above-referenced applications for Class A licenses.

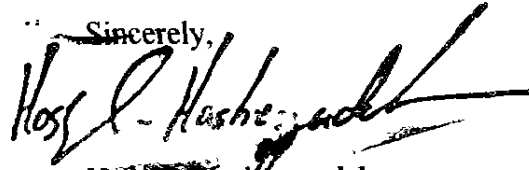
Channel 3, the licensee of television station KIII(TV), Corpus Christi, was allotted channel 47 as its DTV channel. *See Sixth Report and Order*, 12 FCC Rcd 14588 (1997). However, on February 8, 1999, Channel 3 filed a petition for rulemaking to substitute channel 8 as its DTV channel, and the Commission adopted a notice of proposed rulemaking on September 3, 1999, setting a closing comment date of November 16, 1999. In its petitions to deny, Channel 3 asserts that the DTV facility proposed in the rulemaking proceeding conflicts with the operation of the two low power television stations, and that accordingly, the Class A license applications cannot be granted. In response, Lopez and Sound both argue that because the allotment proceeding remains pending, and the allotment was not made by the date on which they filed statements of eligibility, the rulemaking proceeding does not take priority over the Class A applications.

In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 00-39, the Commission adopted certain processing priorities between DTV proposals and NTSC applications and rulemaking proceedings. *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946 (2001). With respect to pending petitions for rule making for new or modified DTV allotments, the Commission stated that “where a Notice of Proposed Rulemaking has been adopted and the comment deadline on the petition for rulemaking has passed, we will consider such petition as ‘cut-off’ as of the comment deadline, [and] applications that are filed after a DTV petition is cut-off on its comment deadline will have to protect the facilities proposed in the DTV petition.” *Id.* at 5969. Here, Channel 3’s rulemaking petition was cut-off as of November 16, 1999, prior to the November 29, 1999 effective date of the CBPA and the filing of statements of eligibility. Thus, Lopez and Sound will be required to protect the channel 8 allotment if Channel 3’s rulemaking petition is granted. Because the Commission has not yet acted on the rulemaking proceeding, we will dismiss the petitions for reconsideration, and the license applications will remain pending. In the event that the Commission grants the requested rulemaking, Lopez and Sound will have an opportunity to file for displacement relief.

¹ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified* at 47 U.S.C. § 336(f).

In view of the foregoing, the petitions to deny filed by Channel 3 of Corpus Christi ARE HEREBY DISMISSED. The Class A television license applications filed by Minerva R. Lopez and Sound Leasing, Inc. will remaining on file pending the outcome of the Corpus Christi rulemaking proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Hossein Hashemzadeh", with a long horizontal flourish extending to the right.

Hossein Hashemzadeh
Supervisory Engineer
Low Power Television Branch
Video Services Division
Mass Media Bureau

CERTIFICATE OF SERVICE

I, Barbara J. McKeever, hereby certify that I have mailed, first class U S mail, postage prepaid, or have caused to be hand-delivered, on this 16th day of January, 2004, a copy of the foregoing OPPOSITION TO PETITION FOR RECONSIDERATION to the following

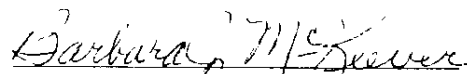
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**Via Hand Delivery